

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA

Plaintiff/Respondent,

v.

JOHN EDWARD MILLER,

Defendant/Petitioner.

NO. CR88-60JET

ORDER

This matter comes on before the above-entitled Court upon Defendant's Motion for Reduction of Sentence pursuant to 18 U.S.C. §3582(c)(2).

Having considered the entirety of the record and files herein, the Court finds and rules as follows:

Defendant's claim that his total offense level was improperly enhanced for use of a firearm under USSG §2B3.1 is incorrect. Defendant's sentencing range for the Armed Bank Robbery counts was calculated under USSG §4B1.1, thus no double counting occurred.

1 Miller's guideline calculation was based upon 4B1.1, as Miller was a career offender. No
2 adjustments were made for the use of a firearm during the bank robberies. Thus,
3 Amendments 599 and 600 provide no basis to grant Miller's motion. Accordingly,
4 Defendant's motion is DENIED.

5 In order for the appeal to proceed, this Court must issue a Certificate of
6 Appealability. See 28 U.S.C. 2253; United States v. Asrar, 108 F.3d 217 (9th Cir. 1997).
7 For the certificate to issue, this Court must determine that "the applicant has made a
8 substantial showing of the denial of a constitutional right" and the Court must "indicate
9 which specific issue or issues satisfy the showing." 28 U.S. C. §2253(c)(2)-(3). If the Court
10 denies the certificate, it must "state the reasons why such a certificate should not issue."
11 Fed.R.APP.P. 22(b); Asrar, 108 F.3d at 218.

12 Defendant's claim lacks merit for the foregoing reasons. Therefore, the Court
13 declines to issue a Certificate of Appealability, as Defendant has failed to make "a
14 substantial showing of the denial of a constitutional right." 28 U.S.C. §2253(c)(2).

15 IT IS SO ORDERED.

16 The clerk of the court is instructed to send uncertified copies of this Order to
17 all counsel of record.

18 DATED this 20th day of June, 2005.

19 /s JACK E. TANNER

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21 JACK E. TANNER
22 SR. UNITED STATES DISTRICT JUDGE
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